80-606

Supreme Court, U. S.
FILED
OCT 14 1980
MICHAEL RODAK, JR., CLERK

No

In the

Supreme Court of the United States.

OCTOBER TERM, 1980.

GENE RUHLANDER, ET AL.,
PLAINTIFFS, APPELLANTS,

v.

DISTRICT COURT OF HAMPSHIRE, ET AL.,
DEFENDANTS, APPELLEES.

Petition for Writ of Certiorari.

RICHARD M. HOWLAND,
358 North Pleasant Street,
Amherst, Massachusetts 01002.
(413) 549-4570

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

Question Presented.

Whether the statutory requirement that only defendant-landlords appealing from adverse decisions in small claims cases must post a bond at least three times greater than any other defendant as required by Mass. G.L. c. 218, § 23, violates the landlord's right to equal protection and due process?

Table of Contents.

Opinion below	1
Jurisdiction	1
Statement of the case	2
Conclusion	3
Appendix A	1a
Appendix B	9a
Appendix C	12a

Table of Authorities Cited.

Cases.

Griffin v. Illinois, 351 U.S. 12 (1956)	3
Lindsey v. Normet, 405 U.S. 56 (1972)	3

Statutes.

Mass. G.L. c. 186, § 15B	2
Mass. G.L. c. 218, § 23	2

No .

In the

Supreme Court of the United States.

OCTOBER TERM, 1980.

GENE RUHLANDER, ET AL.,
PLAINTIFFS, APPELLANTS,

v.

DISTRICT COURT OF HAMPSHIRE, ET AL.,
DEFENDANTS, APPELLEES.

Petition for Writ of Certiorari.

Opinion Below.

The opinion of the Supreme Judicial Court of Massachusetts, reported at Massachusetts Advance Sheets (1980) 1691, appears in the appendix attached hereto (App. A. 1a).

Jurisdiction.

The decision to be reviewed was entered in the Supreme Judicial Court on July 15, 1980, and there has been no petition

---

*The parties to the proceedings are Gene Ruhlander and Hampshire Village Associates, plaintiffs below and appellees in the Supreme Judicial Court of Massachusetts, appellants here. The defendants are the District Court of Hampshire (Massachusetts) and Matthew Zacarian.

for rehearing. This is a petition for review of a statute which is alleged to be unconstitutional pursuant to the provisions of the Fourteenth Amendment of the Constitution of the United States.

The challenged statute, Mass. G.L. c. 218, § 23, is also set forth in the appendix hereto (App. B. 9a).

Statement of the Case.

The plaintiffs-appellants are Hampshire Village Associates and their manager Gene Ruhlander who leased an apartment to the defendant Matthew Zacarian and others for a period ending July 31, 1978. At the conclusion of the leased tenancy the tenants did not deliver the premises to the landlord, consequently when the premises were finally vacated, the landlord took certain deductions from the security deposit of the tenants before returning the balance. The tenants sued the landlord for their security deposit under Mass. G.L. c. 186, § 15B, which appears as appendix C attached hereto (App. C. 12a), and the District Court of Hampshire awarded triple damages to the tenants. The landlord appealed, and in attempting to file the appeal, was unable to file a bond pursuant to Mass. G.L. c. 218, § 23 due to the inability to compute the amount required by the statute and further objecting at being required to pay more than the one hundred and five dollars all other parties would be required to pay. Whereupon this action was brought against the District Court of Hampshire and the tenant to declare that the requirement of posting a bond in order to appeal a small claims decision, which is greater than any other defendant appealing a small claims decision in Massachusetts, was unconstitutional.

The Hampshire Superior Court judge (Kent Smith, J.), held the statute unconstitutional and the District Court of Hampshire appealed.

The Supreme Judicial Court of Massachusetts (Kaplan, J.), in an opinion, held the challenged statute constitutional and reversed the Superior Court of Hampshire.

Conclusion.

The appellant argues that the decision of the Supreme Judicial Court for the Commonwealth of Massachusetts is directly contrary to the holdings of this Court in *Lindsey* v. *Normet*, 405 U.S. 56 (1972) for the reasons further set forth in *Griffin* v. *Illinois*, 351 U.S. 12 (1956).

While states may not be required to offer its citizens access to Appellate Courts, once they do so, they may not discriminate between citizens on an irrational basis as in this statute.

Respectfully submitted,

RICHARD M. HOWLAND,
358 North Pleasant Street,
Amherst, Massachusetts 01002.
(413) 549-4570

HAMPSHIRE VILLAGE ASSOCIATES & another[1] *vs.* DISTRICT COURT OF HAMPSHIRE & another.[2]

Hampshire. May 5, 1980. — July 15, 1980.

Present: HENNESSEY, C.J., KAPLAN, WILKINS, LIACOS, & ABRAMS, JJ.

Constitutional Law, Equal protection of laws. *Due Process of Law*, Vagueness of statute, Bond. *Practice, Civil*, Bond. *Landlord and Tenant*, Security deposit.

CIVIL ACTION commenced in the Supreme Judicial Court for the county of Suffolk on February 22, 1979.

On transfer to the Superior Court Department, the case was heard by *Smith*, J., on a motion for judgment on the pleadings.

The Supreme Judicial Court granted a request for direct appellate review.

Paul W. Johnson, Assistant Attorney General, for the District Court of Hampshire.

Richard M. Howland for the plaintiffs.

KAPLAN, J. Hampshire Village Associates (landlord), a limited partnership owning a residential building in Amherst, leased an apartment to Matthew Zacarian (tenant)[3] for the period August 1, 1977, to July 31, 1978, and received $533 from the tenant as a security deposit. Apparently the tenant quit the apartment in early August, 1978, but it was not until September 18, 1978, that the landlord remitted $279.01 to the tenant, representing the security deposit plus accrued interest less an amount for repairs, re-

[1] Gene Ruhlander.

[2] Matthew Zacarian.

[3] In fact Zacarian was a cotenant with two other men.

pairs, replacements, and unpaid rent claimed to be chargeable to the tenant. Within the week, the tenant commenced a small claims proceeding in the District Court of Hampshire against the landlord (and one Ruhlander, manager) claiming damages pursuant to G. L. c. 186, § 15B. This section states that for violation of certain provisions thereof, including a provision requiring a landlord to return a security deposit, or balance, within thirty days after the termination of a tenancy, "the tenant shall be awarded damages in an amount equal to three times the amount of such security deposit or balance thereof to which the tenant is entitled plus interest at the rate of five per cent from the date when such payment became due, together with court costs and reasonable attorney's fees." *Id.* at (7). After bench trial, there was a finding for the tenant in multiple amount.[4]

Desiring to appeal to the Superior Court for trial by jury, the landlord tendered to the clerk of the District Court, with the filing fee, a bond for $100 to cover costs, which is the usual bond required on appeal from small claims judgments (provision of G. L. c. 218, § 23, first par., inserted by St. 1974, c. 166, § 1). The clerk, however, declined to enter the appeal, and referred the landlord to that part of the statute (further provision of § 23, first par., inserted by St. 1977, c. 979, § 2) which states that on landlord's appeal from an adverse finding in an action brought by a tenant pursuant to G. L. c. 186, § 15B, including an action for return of security deposit, "bond shall be given in an amount equal to three times the amount of the security deposit or balance thereof to which the tenant is entitled,

[4] The District Court, apparently unaware of the amendment of § 15B here relevant, effective September 1, 1978, as to existing as well as future security deposits (see St. 1977, c. 979, §§ 1, 2; St. 1978, c. 553, §§ 2, 3), applied the earlier text prescribing double damages (see St. 1970, c. 666, § 1, as amended by St. 1972, c. 639, § 1). That mistake would not be repeated on appeal of the small claims judgment to the Superior Court, and the present declaratory action concerns itself properly with the current version of § 15B and the corresponding treble bond provisions of G. L. c. 218, § 23, similarly effective on September 1, 1978 (see St. 1977, c. 979, §§ 2, 4).

plus interest at the rate of five per cent from the date when such payment became due, together with court costs and an amount equal to a reasonable attorney's fee for service which had been performed by an attorney, if any, or which may be expected to be performed by an attorney during the pendency of the appeal."

The landlord declined to give such a bond. Instead the landlord (joining Ruhlander as plaintiff) commenced the present action in the Superior Court, Hampshire County, against the District Court and Zacarian,[5] praying a declaration that the quoted bond statute is unconstitutional under the equal protection clause of the Federal Constitution and the cognate provision of the Commonwealth Constitution. Added was a claim that due process was violated by reason of the vagueness of the same statute. A motion by the defendant District Court to dismiss the complaint for failure to state a claim was denied by the judge of the Superior Court, and the defendant answered, appending a record of the small claims proceeding. The plaintiffs' motion for judgment on the pleadings was then allowed. We granted the defendant District Court's motion for direct appellate review.[6] The judgment appealed from was erroneous, and will be reversed.

1. There is no contention that the treble damage provision of G. L. c. 186, § 15B, is itself invalid. We find in our statute book a number of examples of civil causes in which the permitted recoveries are multiples of the actual damages found to have been suffered:[7] in those degrees the

[5] Zacarian did not answer the complaint but filed an appearance a month after the Superior Court judge ruled in the present case.

[6] By agreement, the judgment forbidding the District Court to "requir[e] a bond greater than $100.00 in any small claims appeal" was stayed pending the present appeal.

[7] See, e.g., G. L. c. 40, § 39G (wilful injury to municipal water facilities); G. L. c. 130, § 24 (damage to shellfish or fishery resources); G. L. c. 221, § 51 (attorney's failure to relinquish client's money on demand); G. L. c. 231, § 85J (fraud or deceit in sale of personal property); G. L. c. 266, § 141 (misrepresentation in sale of odometer).

Legislature has declared its displeasure with the described acts, sought to deter their commission, and encouraged vindicative lawsuits if wrongdoing was not stemmed. As the Court said in *Missouri Pac. Ry.* v. *Humes*, 115 U.S. 512, 523 (1885): "The power of the State to impose fines and penalties for a violation of its statutory requirements is coeval with government, and the mode in which they shall be enforced, whether at the suit of a private party, or at the suit of the public, and what disposition shall be made of the amounts collected, are merely matters of legislative discretion. The statutes of nearly every State of the Union provide for the increase of damages where the injury complained of results from the neglect of duties imposed for the better security of life and property, and make that increase in many cases double, in some cases treble, and even quadruple the actual damages. And experience favors this legislation as the most efficient mode of preventing, with the least inconvenience, the commission of injuries. The decisions of the highest courts have affirmed the validity of such legislation. The injury actually received is often so small that in many cases no effort would be made by the sufferer to obtain redress, if the private interest were not supported by the imposition of punitive damages." The singling out for such civil penalties of particular conduct, especially conduct in the economic sphere, raises no question under the equal protection guaranties — unless, perchance, the selection was bereft of a plausible reason. See *Newell* v. *Rent Bd. of Peabody*, Mass. , (1979);[a] *Paro* v. *Longwood Hosp.*, 373 Mass. 645 (1977); *Ortwein* v. *Schwab*, 410 U.S. 656, 660 (1973). Cf. *Marcoux* v. *Attorney Gen.*, Mass. , n.4 (1978).[b]

Section 15B is not without reason. The question of security deposits has long been agitated; the problems are well known;[8] and the Legislature has attempted progres-

[a] Mass. Adv. Sh. (1979) 1713, 1720.

[b] Mass. Adv. Sh. (1978) 1011, 1013 n.4.

[8] See Blumberg & Robbins, Beyond URLTA: A Program for Achieving Real Tenant Goals, 11 Harv. C.R.-C.L.L. Rev. 1, 18-19 n.93 (1976).

sively to deal with them. In 1969, § 15B provided on the point merely that a landlord was not to require a security deposit in excess of two months' rent. St. 1969, c. 244. By September 1, 1978, when that section reached its present form (see St. 1978, c. 553, §§ 2, 3), the legislative controls were much elaborated. A security deposit is not to exceed one month's rent, and is to remain the tenant's property and be held as a fund in trust in an interest-bearing account in a bank whose name and location must be notified to the tenant; and there is provision for payment of interest to the tenant on certain terms. §§ 15B (1) (*b*) (*iii*), (3). A landlord receiving the deposit is to furnish the tenant with a written statement of the condition of the premises prefaced by a statutory warning to the tenant to scrutinize the list and object to it if incorrect. *Id.* at (2) (*c*). Record keeping by the landlord regarding condition, repairs, and so forth is obligatory. At (2) (*d*). There is elaborate regulation of the handling of a deposit upon transfer by the landlord of his interest in the premises. At (5). A landlord is bound to return the deposit to a tenant within thirty days after termination of occupancy, deducting only unpaid rent, any unpaid increase in real estate taxes chargeable to the tenant under an escalation clause, and a reasonable amount necessary to repair damages by the tenant (reasonable wear and tear excluded), the damage and repairs to be itemized under oath, and cost of repairs to be supported by evidence such as estimates and bills. At (4). Finally, stated violations of § 15B result in forfeiture of the landlord's right to retain any portion of the security deposit, or, in any action by a tenant to recover a deposit, to counterclaim for damage to the premises. At (6). And three of these violations — failure to place the deposit in a bank account, to transfer the deposit to a successor in interest, or to return the deposit or balance timely to the tenant on termination of tenancy — fall to the treble damage provision quoted above. At (7). Of § 15B it is said that "[b]y limiting the freedom of landlords and tenants to contract in this regard [as to security deposits], the Legislature manifested a concern for the welfare of

tenants in residential property who, as a practical matter, are generally in inferior bargaining positions and find traditional avenues of redress relatively useless; i.e., the legal expense of chasing a security deposit would be more than the amount of deposit." *Goes* v. *Feldman*, Mass. App. Ct. , (1979).[c]

2. If the § 15B provision for treble damages is taken to be free of constitutional doubt, then it follows with high probability that the provision of G. L. c. 218, § 23, for an appeal bond in roughly similar amount to protect that recovery is likewise constitutional. A State "may properly take steps to insure that an appellant post adequate security before an appeal to preserve the property at issue [or] to guard a damage award already made." *Lindsey* v. *Normet*, 405 U.S. 56, 77 (1972). More specifically, a State "has broad authority to provide for the recovery of double or treble damages in cases of illegal conduct that it regards as particularly reprehensible, even though posting an appeal bond by an appellant will be doubly or triply more difficult than it otherwise would be." *Id.* at 78.

As indicated, the same motives which might lead a Legislature to multiply the damage recovery could persuade it to require a corresponding appeal bond. In the present case, moreover, the appeals for which the protective bond is legislated arise from judgments in small claims proceedings where the jurisdictional limit is $750.[9] As to litigation over relatively small amounts, the Legislature could reasonably have seen a special need for measures that would chill frivolous appeals, discourage dilatory tactics where appeal was taken, and ensure full final recovery if the appeal was lost. See *Paro* v. *Longwood Hosp.*, *supra* at 653; *Damaskos* v. *Board of Appeal of Boston*, 359 Mass. 55, 64 (1971).[10]

---

[c] Mass. App. Ct. Adv. Sh. (1979) 1456, 1465.

[9] Meaning the basic amount before multiplication. See G. L. c. 218, § 21, next-to-last sentence.

[10] The landlord's case would not be improved by argument in terms of undue burdening of its right to a jury trial. See *H.K. Webster Co.* v. *Mann*, 269 Mass. 381, 385 (1929); *Paro* v. *Longwood Hosp.*, 373 Mass. 645, 654 (1977).

The plaintiff landlord sees unconstitutional discrimination in requiring landlords to give the treble bond on appeal from small claims judgments in the security deposit cases, while making no such demand on appellants in other types of small claims cases outside the landlord-tenant field. But, beyond the connection, already mentioned, between the authorized recovery and the bond on appeal, justification can be found in the proposition that "[t]here are unique factual and legal characteristics of the landlord-tenant relationship that justify special statutory treatment inapplicable to other litigants." *Lindsey* v. *Normet*, *supra* at 72.

Our decision should be read in light of the facts of the case. We need not express an opinion whether a bond in treble amount can be demanded of a landlord in necessitous circumstances who has a seemingly meritorious appeal. Cf. *Gugino* v. *Harvard Community Health Plan*, Mass. , - (1980).[d] [11] Nor need we say whether the treble bond provision can be constitutionally applied to a small claims judgment in single, not treble, amount.[12] And, putting constitutional problems to one side, we are not prepared to enlarge on the relation, if any, between G. L.

---

[d] Mass. Adv. Sh. (1980) 1037, 1041-1042.

[11] A plaintiff, seeking to pursue a medical malpractice claim after an adverse finding by a malpractice tribunal, is ordinarily required to post a bond in stated amount, but the judge may scale down the amount in case the plaintiff is indigent. G. L. c. 231, § 60B. In *Gugino*, on the assumption (contrary to our holding) that the adverse finding was correct, we thought the judge had abused his discretion in not reducing the bond sufficiently.

General Laws c. 218, § 23, has a provision for waiving the $100 bond, usually required on appeal from small claims judgments, where a defendant has insufficient funds and the appeal is not frivolous. But there is no such provision directed to appeals in the treble damage cases of § 15B.

[12] This possibility exists because the treble bond provision applies nominally to judgments in single amount that may be recovered under § 15B, e.g., for failure to furnish the tenant an itemized list of damages within thirty days of the termination of occupancy (§ 15B [6] [*b*]). This may raise a possible constitutional question under one aspect of *Lindsey* v. *Normet*, 405 U.S. 56, 79 (1972).

c. 186, § 15B, and G. L. c. 93A, §§ 2 (c), 9, so far as the latter may apply to security deposit claims.[13]

3. The landlord's due process argument protests the alleged fatal obscurity of G. L. c. 218, § 23. But at most the landlord is able to point to possible problems of interpretation, and it remains to be seen whether or in what respects any such problems will present themselves at or after trial in the Superior Court. See *United States* v. *Mazurie*, 419 U.S. 544, 550 (1975). The fact that a statute, particularly a civil statute, may require interpretation at some points does not render it unconstitutional at the threshold for vagueness or ambiguity; otherwise it would be nearly impossible to launch regulatory statutes of any complexity. Cf. *Commonwealth* v. *Gustafsson*, 370 Mass. 181, 187 (1976). We add that the alleged ambiguities here are not connected so much to the standards of conduct imposed, as to the details of enforcement. See *Commonwealth* v. *Gallant*, 373 Mass. 577, 580-581 (1977); *Jordan* v. *DeGeorge*, 341 U.S. 223, 230 (1951); *Connally* v. *General Constr. Co.*, 269 U.S. 385, 391 (1926).

The judgment is reversed and a judgment will be entered declaring the questioned statutes to be constitutional in their present application.

So ordered.

[13] Pursuant to § 2 (c) of G. L. c. 93A, the consumer protection statute, the Attorney General has issued a regulation regarding late return of a security deposit as an unfair practice. 940 Code Mass. Regs. § 3.17(4)(c) (1978).

Appendix B.

MASSACHUSETTS GENERAL LAWS, CHAPTER 218.

§ 23 Judgment Final, When; Removal, When and by Whom.

Every cause begun under the procedure shall be determined initially in the district court. No such cause may be removed for trial in the superior court. In any action for property damage caused by a motor vehicle where the action is removed to the district court by the insurer and the unpaid party recovers a judgment for any amount due and payble by the insurer, the court shall assess against the insurer in addition thereto costs and reasonable attorney's fees. A plaintiff beginning a cause under the procedure shall be deemed to have waived a trial by jury and any right of appeal to the superior court; but if said cause shall be appealed to the superior court by the defendant as hereinafter provided, the plaintiff shall have the same right to claim a trial by jury as if the cause had been begun in the superior court. The defendant may, within ten days after receipt of the court's finding, file in the court where the cause was determined a claim of trial by jury, and his affidavit that there are questions of law and fact in the cause requiring a trial by jury, with specifications thereof, and that such trial is intended in good faith. The defendant's claim of trial by jury shall be accompanied by five dollars for the entry of the cause in the superior court and a bond in the penal sum of one hundred dollars, with such surety or sureties as may be approved by the plaintiff or the clerk or an assistant clerk of the district court, payable to the other party or parties to the cause, conditioned to satisfy any judgment of costs which may be entered against him in the superior court in said cause within thirty days after the entry thereof; provided, that in any action brought by a tenant of residential premises pur-

suant to the provisions of section fifteen B of chapter one hundred and eighty-six, bond shall be given in an amount equal to three times the amount of the security deposit or balance thereof to which the tenant is entitled, plus interest at the rate of five per cent from the date when such payment became due, together with court costs and an amount equal to a reasonable attorney's fee for service which had been performed by an attorney, if any, or which may be expected to be performed by an attorney during the pendency of the appeal.

The clerk shall forthwith transmit such original papers or attested copies thereof as the rules for the procedure may provide, and the superior court may try the cause as transmitted or may require pleadings pursuant to the Massachusetts Rules of Civil Procedure, but the cause may be marked for trial on the list of causes advanced for speedy trial by jury. A finding for the plaintiff in the district court shall be prima facie evidence for the plaintiff in the superior court trial. At such trial the plaintiff may, but need not, introduce evidence.

No bond shall be required of a county, city, town or other municipal corporation, or of a board, officer or employee thereof represented by the city solicitor, town counsel or other officer having similar duties, or of a political subdivision, or of a party who has given bond according to law to dissolve an attachment or of a defendant in an action of tort arising out of the ownership, operation, maintenance, control or use of a motor vehicle or trailer as defined in section one of chapter ninety if the payment of any judgment for costs which may be entered against him is secured, in whole or in part, by a motor vehicle liability bond or policy or a deposit as provided in section thirty-four D of chapter ninety.

The court shall waive the requirement of a bond in the amount of one hundred dollars if it is satisfied that the defendant has insufficient funds available to him to furnish the necessary bond and that the defendant's appeal is not frivolous.

No party to a cause under the procedure shall be entitled to a report. If the court is of the opinion that a question of law requires review, it may submit the matter, in the form of a report of a case stated, to the appellate division.

Appendix C.

MASSACHUSETTS GENERAL LAWS, CHAPTER 186.

§ 15B. Void Provisions of Residential Leases; Lessor's Rights of Entry; Security Deposits; Interest or Penalty for Failure to Pay Rent, etc.

(1) (*a*) No lease relating to residential real property shall contain a provision that a lessor may, except to inspect the premises, to make repairs thereto or to show the same to a prospective tenant, purchaser, mortgagee or its agents, enter the premises before the termination date of such lease. A lessor may, however, enter such premises:

(*i*) in accordance with a court order;

(*ii*) if the premises appear to have been abandoned by the lessee; or

(*iii*) to inspect, within the last thirty days of the tenancy or after either party has given notice to the other of intention to terminate the tenancy, the premises for the purpose of determining the amount of damage, if any, to the premises which would be caused for deduction from any security deposit held by the lessor pursuant to this section.

(*b*) At or prior to the commencement of any tenancy, no lessor may require a tenant or prospective tenant to pay any amount in excess of the following:

(*i*) rent for the first full month of occupancy; and,

(*ii*) rent for the last full month of occupancy calculated at the same rate as the first month; and,

(*iii*) a security deposit equal to the first month's rent provided that such security deposit is deposited as required by subsection (3) and that the tenant is given the statement of condition as required by subsection (2); and,

(*iv*) the purchase and installation cost for a key and lock.

(*c*) No lease or other rental agreement shall impose any interest or penalty for failure to pay rent until thirty days after such rent shall have been due.

(*d*) No lessor or successor in interest shall at any time subsequent to the commencement of a tenancy demand rent in advance in excess of the current month's rent or a security deposit in excess of the amount allowed by this section. The payment in advance for occupancy pursuant to this section shall be binding upon all successors in interest.

(*e*) A security deposit shall continue to be the property of the tenant making such deposit, shall not be commingled with the assests of the lessor, and shall not be subject to the claims of any creditor of the lessor or of the lessor's successor in interest, including a foreclosing mortgagee or trustee in bankruptcy; provided, however, that the tenant shall be entitled to only such interest as is provided for in subsection (3) *(b)*.

(2) (*a*) Any lessor or his agent who receives, at or prior to the commencement of a tenancy, rent in advance for the last month of the tenancy from a tenant or prospective tenant shall give to such tenant or prospective tenant at the time of such advance payment of a receipt indicating the amount of such rent, the date on which it was received, its intended application as rent for the last month of the tenancy, the name of the person receiving it and, in the case of an agent, the name of the lessor for whom the rent is received, and a description of the rented or leased premises.

(*b*) Any lessor or his agent who receives a security deposit from a tenant or prospective tenant shall give said tenant or prospective tenant at the time of receiving such security deposit a receipt indicating the amount of such security deposit, the name of the person receiving it and, in the case of an agent, the name of the lessor for whom such security deposit is received, the date on which it is received, and a description of the premises leased or rented. Said receipt shall be signed by the person receiving the security deposit.

(*c*) Any lessor of residential real property, or his agent, who accepts a security deposit from a tenant or prospective tenant shall, upon receipt of such security deposit, or within ten days

after commencement of the tenancy, whichever is later, furnish to such tenant or prospective tenant a separate written statement of the present condition of the premises to be leased or rented. Such written statement shall also contain a comprehensive listing of any damage then existing in the premises, including, but not limited to, any violations of the state sanitary or state building codes certified by a local board of health or building official or adjudicated by a court and then existing in the premises. Such statement shall be signed by the lessor or his agent and contain the following notice in twelve-point bold-face type at the top of the first page thereof:

"This is a statement of the condition of the premises you have leased or rented. You should read it carefully in order to see if it is correct. If it is correct you must sign it. This will show that you agree that the list is correct and complete. If it is not correct, you must attach a separate signed list of any damage which you believe exists in the premises. This statement must be returned to the lessor or his agent within fifteen days after you receive this list or within fifteen days after you move in, whichever is later. If you do not return this list, within the specified time period, a court may later view your failure to return the list as your agreement that the list is complete and correct in any suit which you may bring to recover the security deposit."

If the tenant submits to the lessor or his agent a separate list of damages, the lessor or his agent shall, within fifteen days of receiving said separate list, return a copy of said list to the tenant with either such lessor's signed agreement with the content thereof or a clear statement of disagreement attached.

(*d*) Every lessor who accepts a security deposit shall maintain a record of all such security deposits received which contains the following information:—

(*i*) a detailed description of any damage done to each of the dwelling units or premises for which a security deposit has been accepted, returned to any tenant thereof or for which the lessor has brought suit against any tenant;

(*ii*) the date upon which the occupancy of the tenant or tenants charged with such damage was terminated; and

(*iii*) whether repairs were performed to remedy such damage, the dates of said repairs, the cost thereof, and receipts therefor.

Said record shall also include copies of any receipt or statement of condition given to a tenant or prospective tenant as required by this section.

Said record shall be availabe for inspection upon request of a tenant or prospective tenant during normal business hours in the office of the lessor or his agent. Upon a wrongful failure by the lessor or his agent to make such record available for inspection by a tenant or prospective tenant, said tenant or prospective tenant shall be entitled to the immediate return of any amount paid in the form of a security deposit together with any interest which has accrued thereon.

The lessor or his agent shall maintain said record for each dwelling unit or premises for which a security deposit was accepted for a period of two years from the date of termination of the tenancy or occupancy upon which the security deposit was conditioned.

(3) (*a*) Any security deposit received by such lessor shall be held in a separate, interest-bearing account in a bank, located within the commonwealth under such terms as will place such deposit beyond the claim of creditors of the lessor, including a foreclosing mortgagee or trustee in bankruptcy, and as will provide for its transfer to a subsequent owner of said property. A receipt shall be given to the tenant within thirty days after such deposit is received by the lessor which receipt shall indicate the name and location of the bank in which the security deposit has been deposited and the amount and account number of said deposit. Failure to comply with this paragraph shall entitle the tenant to immediate return of the security deposit.

(*b*) A lessor of residential real property who holds a security deposit pursuant to this section for a period of one year or longer from the commencement of the term of the tenancy shall, beginning with the first day of the tenancy, pay interest at the rate of five per cent per year, payable to the tenant at the end of each year of the tenancy. Such interest shall be paid over to the tenant each year as provided in this clause, provided, however, that in the event that the tenancy is terminated before the anniversary date of the tenancy, the tenant shall receive all accrued interest within thirty days of such termination. Such interest shall be beyond the claims of such lessor, except as provided for in this section. At the end of each year of a tenancy, such lessor shall give or send to the tenant from whom a security deposit has been received a statement which shall indicate the name and address of the bank in which the security deposit has been placed, the amount of the deposit, the account number, and the amount of interest payable by such lessor to the tenant. The lessor shall at the same time give or send to each such tenant the interest which is due or shall include with the statement required by this clause a notification that the tenant may deduct the interest from the tenant's next rental payment. If, after thirty days from the end of each year of the tenancy, the tenant has not received such notice or payment, the tenant may deduct from his next rent payment the interest due.

(4) The lessor shall, within thirty days after the termination of occupancy under a tenancy-at-will or the end of the tenancy as specified in a valid written lease agreement, return to the tenant the security deposit or any balance thereof; provided, however, that the lessor may deduct from such security deposit for the following:

(*i*) any unpaid rent which has not been validly withheld or deducted pursuant to the provisions of any special or general law and

(*ii*) any unpaid increase in real estate taxes which the tenant is obligated to pay pursuant to a tax escalation clause which conforms to the requirements of section fifteen C; and

(*iii*) a reasonable amount necessary to repair any damage caused to the dwelling unit by the tenant or any person under the tenant's control or on the premises with the tenant's consent, reasonable wear and tear excluded. In the case of such damage, the lessor shall provide to the tenant within such thirty days an itemized list of damages, sworn to by the lessor or his agent under pains and penalties of perjury, itemizing in precise detail the nature of the damage and of the repairs necessary to correct such damage, and written evidence, such as estimates, bills, invoices or receipts, indicating the actual or estimated cost thereof. No amount shall be deducted from the security deposit for any damage to the dwelling unit which was listed in the separate written statement of the present condition of the premises which was required to be given to the tenant prior to the execution of the lease or creation of the tenancy pursuant to clause *(c)* of subsection (2) or any damages listed in any separate list submitted by the tenant and signed by the lessor or his agent pursuant to said clause *(c)*, unless the lessor subsequently repaired or caused to be repaired said damage and can prove that the renewed damage was unrelated to the prior damage and was caused by the tenant or by any person under the tenant's control or on the premises with the tenant's consent.

No deduction may be made from the security deposit for any purpose other than those set forth in this section.

(5) Whenever a lessor who receives a security deposit transfers his interest in the dwelling unit for which the security deposit is held, whether by sale, assignment, death, appointment of a receiver or trustee in bankruptcy, or otherwise, the lessor shall transfer such security deposit together with any interest which has accured thereon for the benfit of the tenant

who made such security deposit to his successor in interest, and said successor in interest shall be liable for the retention and return of said security deposit in accordance with the provisions of this section from the date upon which said transfer is made; provided however, that the granting of a mortgage on such premises shall not be a transfer of interest. The successor in interest shall, within forty-five days from the date of said transfer, notify the tenant who made such security deposit that such security deposit was transferred to him and that he is holding said security deposit. Such notice shall also contain the lessor's name, business address, and business telephone number, and the name, business address, and business telephone number of his agent, if any. Said notice shall be in writing.

Upon such transfer, the lessor or his agent shall continue to be liable with respect to the provisions of this section until:

(*a*) there has been a transfer of the amount of the security deposit so held to the lessor's successor in interest and the tenant has been notified in writing of the transfer and of the successor in interest's name, business address, and business telephone number;

(*b*) there has been compliance with this clause by the successor in interest; or

(*c*) the security deposit has been returned to the tenant.

In the event that the lessor fails to transfer said security deposit to his successor in interest as required by this subsection the successor in interest shall, without regard to the nature of the transfer, assume liability for payment of the security deposit to the tenant in accordance with the provisions of this section; provided, however, that if the tenant still occupies the dwelling unit for which the security deposit was given, said successor in interest may satisfy such obligation by granting the tenant free occupation and use of the dwelling unit for a period of time equivalent to that period of time for

which the dwelling unit could be leased or occupied if the security deposit were deemed to be rent. The liability imposed by this paragraph shall not apply to a city or town which acquires title to property pursuant to chapter sixty or to a foreclosing mortgagee or a mortgagee in possession which is a financial institution chartered by the commonwealth or the United States. The term "rent", as used in the preceding sentence, shall mean the periodic sum paid by the tenant for the use and occupation of the dwelling unit in accordance with the terms of his lease or other rental agreement.

(6) The lessor shall forfeit his right to retain any portion of the security deposit for any reason, or, in any action by a tenant to recover a security deposit, to counterclaim for any damage to the premises if he:

(a) fails to deposit such funds in an account as required by subsection (3);

(b) fails to furnish to the tenant within thirty days after the termination of the occupancy the itemized list of damages, if any, in compliance with the provisions of this section;

(c) uses in any lease signed by the tenant any provision which conflicts with any provision of this section and attempts to enforce such provision or attempts to obtain from the tenant or prospective tenant a waiver of any provision of this section;

(d) fails to transfer such security deposit to his successor in interest or to otherwise comply with the provisions of subsection (5) after he has succeeded to an interest in residential real property; or,

(e) fails to return to the tenant the security deposit or balance thereof to which the tenant is entitled after deducting therefrom any sums in accordance with the provisions of this section, together with any interest thereon, within thirty days after termination of the tenancy.

(7) If the lessor or his agent fails to comply with clauses *(a)*, *(d)*, *or (e)* of subsection 6, the tenant shall be awarded

damages in an amount equal to three times the amount of such security deposit or balance thereof to which the tenant is entitled plus interest at the rate of five per cent from the date when such payment became due, together with court costs and reasonable attorney's fees.

(8) Any provision of a lease which conflicts with any provision of this section and any waiver by a tenant or prospective tenant of any provision of this section shall be deemed to be against public policy and therefore void and unenforceable.